

National Credit Union Administration

§ 701.36

6. *Accrued interest.* By initialing below, [name of credit union] and [name of institutional investor] agree that accrued interest will be:

- ___ Paid into and become part of the secondary capital account;
- ___ Paid directly to the investor;
- ___ Paid into a separate account from which the investor may make withdrawals; or
- ___ Any combination of the above provided the details are specified and agreed to in writing.

7. *Subordination of claims.* In the event of liquidation of [name of credit union], the funds committed to the secondary capital account will be subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

8. *Prompt Corrective Action.* Under certain net worth classifications (see 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be), the NCUA Board may prohibit [name of credit union] from paying principal, dividends or interest on its uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest will continue to accrue under the terms of the account to the extent permitted by law.

ACKNOWLEDGED AND AGREED TO this ___ day of [month and year] by:

[name of investor's official]
[title of official]
[name of investor]
[address and phone number of investor]
[investor's tax identification number]

[name of credit union official]
[title of official]

[61 FR 3790, Feb. 2, 1996, as amended at 61 FR 50695, 50697, Sept. 27, 1996; 64 FR 72270, Dec. 27, 1999; 65 FR 21131, Apr. 20, 2000; 71 FR 4238, Jan. 26, 2006]

§ 701.35 Share, share draft, and share certificate accounts.

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in section 117 of the Act (12 U.S.C. 1763).

(b) A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

(d) For purposes of this section, "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[47 FR 17979, Apr. 27, 1982, as amended at 50 FR 4637, Feb. 1, 1985; 59 FR 50445, Sept. 27, 1993]

§ 701.36 FCU ownership of fixed assets.

(a) *Investment in Fixed Assets.* (1) No Federal credit union with \$1,000,000 or more in assets may invest in any fixed assets if the investment would cause the aggregate of all such investments to exceed five percent of the credit union's shares and retained earnings.

(2) The NCUA may waive the prohibition in paragraph (a)(1) of this section.

(i) A Federal credit union desiring a waiver must submit a written request to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The request must describe in detail the contemplated investment and the need for the investment. The request must also indicate the approximate aggregate amount of fixed assets, as a percentage of shares and retained earnings, that the credit union would hold after the investment.

(ii) The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director might require in support of the waiver request.

(iii) The regional director will approve or disapprove the waiver request in writing within 45 days after receipt of the request and all necessary supporting documentation. If the regional director approves the waiver, the regional director will establish an alternative limit on aggregate investments